

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.30.617 and 17.30.638 pertaining to)	PROPOSED AMENDMENT
outstanding resource water designation)	
for the Gallatin River)	(WATER QUALITY)

TO: All Concerned Persons

1. On October 25, 2006, at 3:00 p.m., the Board of Environmental Review will hold a public hearing at the Gallatin Gateway Inn, 76405 Gallatin Road, Gallatin Gateway, Montana to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., October 18, 2006, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.30.617 OUTSTANDING RESOURCE WATERS -- DESIGNATION

(1) remains the same.

(2) The mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as of [the effective date of legislation approving the ORW designation] is an ORW.

AUTH: 75-5-301, 75-5-316, MCA
IMP: 75-5-316, MCA

REASON: The board is proposing to amend ARM 17.30.617 to designate the mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW).

The board received a petition from American Wildlands in December 2001 requesting the board to initiate rulemaking to designate the mainstem Gallatin River from the Yellowstone National Park boundary to the confluence of Spanish Creek as an Outstanding Resource Water (ORW).

At the March 2002 meeting the board received comment on the petition and directed the Department of Environmental Quality to prepare an environmental impact study (EIS) addressing the petition. The draft EIS was released for public comment on September 8, 2006, and a final EIS and Record of Decision (ROD) will be prepared following the close of the comment period.

The petitioned segment of the Gallatin River meets the following criteria from

75-5-316(4), MCA: "(c) the presence of an outstanding recreational fishery in the waters;" and "(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this section (4)."

The Gallatin River is known nationally as an outstanding recreational fishery. This reputation brings in anglers from out of state as well as Montana and contributes to the economy by supporting direct and indirect employment.

The proposed rulemaking is necessary because the increased protection afforded by outstanding resource water designation will protect the Gallatin River from continuing development causing increases in nutrient loads to the Gallatin River and some tributaries. Increasing nutrients will affect the fishery and the economic benefits of recreational fishing.

The proposed designation of the petitioned segment of the Gallatin River is necessary because there is no other effective process available to achieve this protection permanently. Current Administrative Rules of Montana and Title 75, Chapter 5, MCA, allow new and increased point source discharges to the river that meet the board's rules for "non significant" changes in water quality and also allow authorizations to degrade water quality. The ORW designation would not allow new or increased point source that result in permanent changes in water quality, including permanent changes that are considered "non significant" under the Board's rules.

The designation of the Gallatin River as an ORW as proposed is contingent upon concurring action by the Legislature.

17.30.638 OUTSTANDING RESOURCE WATERS -- PROHIBITIONS

(1) Any new or increased point source discharge that would result in a permanent change in water quality of an ORW is prohibited. This prohibition does not apply to new or increased point source discharges to an ORW if the point source discharge was approved, authorized, licensed, or permitted by the department or local government body prior to the effective date of the ORW designation.

(2) Any new or increased source discharging to ground water that has a direct hydrologic connection to an ORW is prohibited if the discharge, either by itself or after taking into consideration cumulative effects of other sources that are subject to the prohibitions of the ORW designation, would result in a permanent, measurable change in the water quality of the ORW. This prohibition does not apply to new or increased sources with a direct hydrologic connection to an ORW if the source was approved, authorized, licensed, or permitted by the department or local government body prior to the effective date of the ORW designation.

AUTH: 75-5-301, 75-5-316, MCA

IMP: 75-5-316, MCA

REASON: The board is proposing to amend ARM 17.30.638 to add a new section clarifying that discharges to ground water with a direct hydrologic connection to an ORW are within the statutory mandate prohibiting any permanent change in the water quality of an ORW resulting from point source discharges. See 75-5-316, MCA.

The board is proposing to add language to existing section (1) and proposed

section (2) to clarify that existing point sources or ground water sources that will result in discharges to an ORW, which have been approved, authorized, licensed, or permitted by the department prior to the effective date of the ORW's designation, are not subject to the prohibitions in the statute against causing permanent changes in the water quality of an ORW.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to the board secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ber@mt.gov, no later than November 2, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The board will preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; openpit mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the board secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

Rule Reviewer

BY: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, September 25, 2006.